

Artículo de investigación

The moral and ethical principles on the formation of competition culture

Морально-Етичні Принципи Формування Культури Конкуренції

Los principios morales y éticos sobre la formación de la cultura de competencia

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Abstract

The aim of the article is to study the influence of moral and ethical principles of economic management on the formation and development of the competition culture in an economic activity, ensuring the exercise of individual natural rights to freedom and fair competition in the field of economic management, and the adoption of culture phenomenon elements in both legal and general social dimensions in Ukrainian legal administration. Methodology of the research A philosophical (dialectical) method was used to consider the culture of competition and fair competition as a system of moral and ethical dimensions of social existence in economic legal relations; general scientific methods (formal-logical, method of analysis and synthesis) allowed exploring the conceptual-categorical apparatus, defining the functions of competition culture in the formation of modern good-faith economic and legal relations; special-legal (comparative-legal, formal-legal) methods allowed determining the peculiarities of influence of the good faith principle on the formation of the competition culture between business entities and mechanisms for their compliance with the measures of legal coercion. The scientific topicality of the work is to carry out a comprehensive study of legal issues of the formation of the competition culture in economic activity to ensure social stability and protect the rights of citizens in economic relations.

Анотація

Мета статті полягає у дослідженні впливу морально-етичних засад господарювання на формування та розвиток культури конкуренції в господарській діяльності, забезпечення реалізації природних прав особистості на свободу та добросовісну конкуренцію в сфері господарювання, утвердження в українському правозастосуванні елементів феномену культури як в правовому так і загально соціальному вимірі. Методологія дослідження. Використано філософський (діалектичний) метод для розгляду культури конкуренції та добросовісної конкуренції, як системи втілення морально-етичних вимірів суспільного буття в господарських правовідносинах; загальнонаукові (формально-логічний, метод аналізу та синтезу) дозволили дослідити понятійно-категоріальний апарат, визначити функції культури конкуренції при формуванні сучасних добросовісних господарсько-правових відносин; спеціально-правових (порівняльно-правовий, формально-юридичний) методи дозволили визначити особливості впливу принципу добросовісності на формування культури конкуренції суб'єктів господарювання та механізмів їх дотримання за допомогою заходів юридичного примусу. Наукова новизна роботи полягає у здійсненні

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Conclusions As a result of the study, it is determined that the ideas of good and evil in society, good faith and unfairness, as well as fairness are the factors that directly contribute to the development of the competition culture in society and the formation of mutual respect principles both from the side of entrepreneurs and consumers, the improvement of a dialogue and mutual understanding of all segments of the public, and these factors are the basis for the further development of national economy and culture.

Key Words: Abuse of right, competition culture, good faith, legal administration, unfair competition.

комплексного дослідження правових проблем формування культури конкуренції в господарській діяльності для забезпечення соціальної стабільності та захисту прав громадян у господарських відносинах. **Висновки.** У результаті дослідження визначено, що сформовані у суспільстві уявлення про добро і зло, добросовісність і недобросовісність, справедливість є факторами, що безпосередньо впливають на розвиток культури конкуренції в суспільстві та формування засад взаємної поваги як з боку підприємців так і споживачів, налагодженню діалогу і взаємного порозуміння усіх верств населення, ці фактори є основою для подальшого розвитку національної економіки і культури.

Ключевые слова: злоупотребления правом, добросовестность, культура конкуренции, недобросовестная конкуренция, правовое администрирование.

Resumen

El propósito del artículo es investigar la influencia de los principios morales y éticos de la economía en la formación y el desarrollo de la cultura de la competencia en la actividad económica, asegurando la realización de los derechos naturales del individuo a la libertad y la competencia leal en la esfera de la gestión económica, la afirmación de los elementos del fenómeno cultural en la dimensión social legal y general en el derecho ucraniano. El método filosófico (dialéctico) se utiliza para considerar la cultura de la competencia y la competencia leal como un sistema de encarnación de las dimensiones morales y éticas de la existencia social en las relaciones económicas; científico general (formal-lógico, método de análisis y síntesis) permitió explorar el aparato conceptual-categorico, para determinar las funciones de la cultura de la competencia en la formación de relaciones económicas-legales modernas de buena fe; Los métodos especiales legales (comparativo legal, formal legal) han permitido determinar las peculiaridades de la influencia del principio de integridad en la formación de la cultura de competencia de las entidades económicas y los mecanismos de su cumplimiento mediante la coerción legal. La novedad científica del trabajo es llevar a cabo un estudio exhaustivo de los problemas legales de formar una cultura de competencia en la actividad económica para garantizar la estabilidad social y proteger los derechos de los ciudadanos en las relaciones económicas. Como resultado de la investigación, se determina que las percepciones del bien y el mal, la honestidad y la injusticia formadas en la sociedad, la justicia son factores que influyen directamente en el desarrollo de una cultura de competencia en la sociedad y en la formación de los principios de respeto mutuo tanto por parte de los empresarios como de los consumidores, estableciendo un diálogo. De todos los segmentos de la población, estos factores son la base para un mayor desarrollo de la economía y la cultura nacional.

Palabras clave: Abuso de la ley, integridad, cultura de la competencia, competencia desleal, administración legal.

Introduction

Socio-economic transformations in Ukraine provide for the formation of a new economic system, the core of which is a competitive mechanism that, along with the state regulation, is capable of ensuring the efficient allocation of

resources, improving the pace of economic development, and stimulating scientific and technological progress. Under the conditions of market transformation of the Ukrainian economy, the issue of competition protection,

prevention of market power abuse by monopolistic structures, as well as formation of conditions for the development of fair competition at the market is particularly relevant. It is worth noting that the state and law in a modern world are in a complex and ambiguous interaction with the universal human culture. In general, culture is all created by a person, having a basis in human consciousness and spirit, and is the result of his creativity. Progress in the development of human culture is determined by the spiritual and material achievements of people, their success in improving their own lives as well as in improving their forms of existence. In this universal cultural process, success and achievements in the development of the law and the state, in improvement of a legal and socio-cultural level of human existence, respect for moral and ethical and economic achievements, in particular competition, is in the field of legal culture. The high level of legal culture is one of the hallmarks of the rule of law, and the state's guarantee of freedom and conscientiousness of economic competition at the constitutional level is the basis for the formation of a culture of competition. The high level of legal culture is one of the features of a law-governed state, and the state's guarantee of freedom and good faith of economic competition at the constitutional level is the basis for the formation of the competition culture.

Fair competition is embodiment of certain moral and ethical and socio-historical concepts of good and evil in economic activity determining the limits of acceptable conduct, in particular in competition. Studying the problem of legal regulation of fair competition, it should be noted that the origins of the notion of fair competition were embedded in Roman law and are the form of reception of the *bona fides* principle in the competition law (Bakalinska, 2014). Many researchers in competition legislation and law emphasize the close link between the principle of good conscience, which has become the basis for building the entire system of civil and commercial turnover in Germany, France, Italy and Switzerland, and the development of competition legislation in these countries. Recognition of a top priority of the good faith principle in actions of participants in an economic turnover led to the need to protect their rights and legitimate interests from unfair competition. So, despite the fact that each country has its own unique system of protection against unfair competition, in most of them unfair competition is seen as a form of abuse of rights, a tort or a form of unlawful conduct, in contrast to fair competition protected by legal

norms of international treaties, current competitive legislation and practices of economic turnover (Bakalinska, 2014).

The **aim of the article** is to study the influence of moral and ethical principles of economic management on the formation and development of the competition culture in an economic activity, ensuring exercise of individual natural rights to freedom and fair competition in the field of economic management, and the adoption of culture phenomenon elements in both legal and general social dimensions in Ukrainian legal administration.

The works of many Ukrainian and foreign researchers were dedicated to the study of legal problems of fair competition protection and formation of competition culture, namely: O. Bezuh, A. Vasiliev C. Verkman, V. Galkin, D. J. Galligan, S. Gorlenko, I. Dahno, V. Dementiev, A. Deringer, V. Dozortsev, S. Kozlov, N. Korchak, O. Kostusev, S. Kuzmina, V. Mamutova, O. Melnichenko, I. Neuffer, M. Oreshkin, O. Podoprighora, O. Ryabchenko, N. Saniahmetova, A. Selivanova, M. Tishchenko, U. Tikhomirov, K. Toteyev.

Methodology

A philosophical (dialectical) method was used to consider the competition culture and fair competition as a system of moral and ethical dimensions of social existence in economic legal relations; general scientific methods (formal-logical, method of analysis and synthesis) allowed studying the conceptual-categorical apparatus, defining the functions of competition culture in the formation of modern good-faith economic and legal relations; special-legal (comparative-legal, formal-legal) methods allowed determining the peculiarities of influence of the good faith principle on the formation of the competition culture between business entities and mechanisms for their compliance with the measures of legal coercion.

The **scientific novelty of the work** is to carry out a comprehensive study of legal issues of the competition culture formation in an economic activity to ensure social stability and protect the rights of citizens in economic relations.

Results and discussion

Ensuring legislative conditions for free and unhindered implementation of fair competitive rivalry is one of the leading lines in implementing the state legal policy. Insufficient

attention to the problem leads to profound negative consequences, in particular in economic turnover, which ultimately affects the whole process of socio-economic development of society and the state. In view of this, it is necessary to create an integral system of competitive relation legal regulation based on a unified theoretical concept of fair competition support and protection at the market. Despite the urgent need, today there are a number of unresolved issues related to understanding the peculiarities of legal regulation of competitive relations in the domestic legal science, in particular the influence of moral and ethical and socio-cultural factors on the development of competitive relations and formation of competition culture. Variety in the views of scientists can be explained by the fact that in the economic law science a main line of analysis of conditions for competitive relation formation and development was not a comprehensive study of this legal phenomenon in general, but the analysis of individual forms and displays of unfair competition; study of causes and consequences of unfair competitive actions; shifting the focus on the analysis of economic rather than moral and ethical aspects of the formation and development of fair competition. The fair competition phenomenon lies in the fact that, on the one hand, it is a means of balancing the private and public interests of competitors, and on the other hand - an independent interest of all participants in competitive relationships (Bakalinska, 2014). Under the influence of fair competitive rivalry, the formation of not only standards of business entities' fair conduct at the market, but also a model of civilized interaction between competitors of the competition, consumers and the state takes place. All the abovementioned creates the conditions for the formation of personal competition culture in the state, which in many cases is more effective means of influencing the participants of competitive relations than any compulsory measures authorized by the state, since such influence is carried out on the basis of a combination of moral-ethical and ethno-social world perceptions of the Ukrainian nation. Only unification of economic, legal and moral-ethical aspects of the functioning of competitive relations with the relevant state regulation and self-regulation as well as maintaining the competitive rivalry culture can ensure the creation of an effective comprehensive model for the regulation of fair competitive relations in Ukraine (Aleshin, et al., 2012).

A key point to economic efficiency is to improve the qualitative and quantitative parameters of

environment, in which the interaction of business entities and their observance of certain conditions of an economic activity take place. One of the means of balancing these processes is fair competition support and protection, the formation of civilized relations between producers, consumers and the state (Lagutin, et al., 2005).

For the market system effective functioning two essential institutions - private property and competition - must work in full. In international legal documents, property rights are viewed as an integral natural right of a person, as indicated in Articles 2 and 17 of the Universal Declaration of Human Rights and Articles 2, 9, 11, 24, 25, 26 of the International Covenant on Civil and Political Rights. Constitutional guarantees of exercise of the property right and the right to participate in competition are stipulated by Articles 41, 42 of the Constitution of Ukraine. The state guarantees not only inviolability of property rights and the right to entrepreneurial activity, but it also balances these guarantees with a constitutional prohibition of both unfair deprivation of property and the prohibition of monopoly position abuse at the market, unlawful restriction of competition and unfair competition. Such an understanding of state regulation in general corresponds to the European values of regulation of the global leading economies. In particular, according to Article 1 of Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the protection of property rights (Harris, O'Boyle, Warbrick, 1995).

The state supports competition as rivalry between economic entities ensured due to the achievement of their own economic benefits, as a result of which consumers and business entities, the competitors, gain an opportunity to choose necessary goods, and at the same time, individual economic entities do not determine the conditions for sale of goods at the market. Regulated, fair competition foresees care for people and in its essence is closer to the rivalry because the interaction and cooperation element plays an important role in it. It was about such competition that L. Erhard wrote:

The most effective means to achieve and ensure wellbeing is competition. It alone enables all people to make the most of social progress, especially in their role of consumers. It also destroys all privileges that are not a direct result of increased labour productivity (1991).

Honest, fair competition provides for the respect to competitor's advantages. However, business entities in their attempt to win in a competitive battle often use unfair methods of competitive battle conduct, which brings to nothing all the benefits of competition. In view of this, unfair competitive actions aimed at unlawful use of intellectual property objects and competitors' activity disruption are more dangerous violations than the monopoly display. Understanding the danger of violating the good faith principles in the competition battle gave rise to the necessity of international legal protection of business entities and consumers' rights against unfair competition. In particular, in accordance with the provisions of Article 10^{bis} of the Paris Convention for the Protection of Industrial Property in 1883, it was determined that an act of unfair competition in the Convention is considered to be any act of competition that contradicts to honest practices in industrial and commercial matters (UN, 1977). It should be noted that according to Article 10^{ter} of the Paris Convention, the governments of all signatory states are obliged to ensure administrative and legal protection of the rights of business entities and citizens against unfair competition. That is, if an entrepreneur cannot obtain adequate protection within the national system of protection against unfair competition, he has the right to apply for the protection of his rights to international legal institutions both in respect of a claim for recognition of offense and a claim to the state authorities that did not provide an effective protection of his rights. Thus, the recognition of unfair competition as an offense actually provides grounds for recognizing fair competition as a universally accepted good that requires proper and effective protection.

On the one hand, a crisis is an impulse for clearing the market from unfair competitors, and on the other hand, it is a possibility of using illegal methods of competition. After all, the methods of competitive battle between companies have intensified in the economic crisis - everyone wants to survive. Thus, the more intense the competition, the more often business entities use inappropriate methods of competition and the greater the temptation to obtain benefits by unfair methods. It is worth noting that quite often you can hear the idea that the crisis is a consequence of competition. However, in our opinion, not competition, but unfair actions and abuse of power of certain powerful business entities at the market, in particular at financial market, have led to an increase in uncertainty in society and the growth of crisis phenomena in the economy. The further development of the system

of economic competition protection, based on the recognition of the need to form a competition culture, the balance of private and public interests, norms of law and ethics, the customs of economic turnover and morality, expansion of the self-regulation area in the field of competition, may become the basis for the formation of a qualitatively new and effective social economic model in Ukraine.

Studying the issue of economic competition legal regulation, we encountered the fact that in not any study researches attempted to identify the concept and content of fair competition, although each of them pointed to the need to provide conditions for its development and protection. Thus, for most researchers, fair competition acts as a certain ideal or aim of legal regulation, but there is no definite objective form of embodiment. The lack of understanding of the fair competition concept does not allow defining the criteria for its assessment and thus providing an effective mechanism for the competition protection.

In the process of fair competition rivalry, private interests of business entities are exercised. The existence of competition enables business entities to present their products, work and services on the market, but only a fair competition allows the best one to win the competition battle because of its own efforts. At the same time, the winning competitor gets his share of profits and can continue to improve his products and services in order to win in the future. Competitors who have lost in the competition for the consumer, on the one hand, receive a certain standard of goods and services that the market requires, and on the other hand, they have the opportunity to raise funds, other productive and intellectual resources to improve their goods and services to win in the future. The consumer, although not directly involved in the competition, acts as its beneficiary. It is the consumer who has the opportunity to choose the most qualitative product that best suits his needs, and with the standardized product, he can choose the goods at the best price.

In a competitive relationship the state acts in two ways: as a business entity, represented by state companies, acquiring their share of profits in fair competition, by obtaining profits from the effective use of state-owned objects, the placement of state orders, and the implementation of state projects. On the other hand, the state, in fair competition, receives a fair share of profits of business entities as taxes and fees that can be used to implement state and

social projects, to establish an effective dialogue between the state and society. Moreover, the dominance of fair competition at the market contributes to reducing the level of offenses by both government and business entities, and also provides a high level of enforcement of administrative and court decisions by offenders who intend to continue their economic activities at the market. The implementation of the good faith principle in competitive rivalry provides an opportunity to form competition culture in society, significantly reduce the level of offenses, effectively protect the rights of business entities and consumers, reduce the level of corruption in public authorities, establish a public dialogue in the state, as well as reduce the level of social and political tension. All the abovementioned contributes both to the formation of a positive innovation, investment and economic climate in the country and an increase in the ranking of the state on a global level (Bakalinska, 2014).

According to P.G. Kharchenko, the positive nature of the good faith principle in competition is found in the establishment of certain standards for the proper conduct of business entities in competitive relations, regulated on the basis of legal norms, trade and fair practices. The extent to which one or another state provides and guarantees the observance of legally binding standards of good faith by business entities defines the possibility to affirm that the business activity in this state is in compliance with trade and fair practices (2004).

In addition, the competition culture forming and supporting the conditions for the fair competition development at the market, involves the socio-active behavior of the entity at the market leading to redistribution of profits and the direction of some of them for the implementation of social tasks by economic entities (charity, social projects), which ultimately leads to a reduction in social tension in society as well as to the formation of civilized relations between consumers and commodity producers. On the other hand, the state creates conditions for the fair competition formation and protection through the formation of legal and organizational principles of protection against unfair competition, dumping, unfriendly actions of individual economic entities and states. The system of these measures consists of normative regulation; control over the market conditions and observance of the rules by its participants established by the state to ensure economic competition in order to prevent violations, restoration of the market in case of violation of these rules and taking appropriate measures

against violators (Vinnik, 2004). A key factor influencing the formation of the competition culture is the rules and principles of fair competition established by the business entities themselves and the establishment of competitive culture in the public consciousness on the basis of balancing the interests of all participants in economic relations. Achievement of this goal is possible in case of self-regulation development in economic activities, the introduction of antimonopoly compliance programs and measures to advocate for competition.

Conclusion

Thus, fair competition is the embodiment of certain moral and ethical and socio-historical ideas about good and evil in an economic activity defining the limits of acceptable conduct, in particular, in competition. Moreover, "good" is a highest, absolute, common to all mankind value, involvement in which fills person's life with sense, it gets intrinsically valuable, but does not serve as a means of reaching other goals; the concept of good is in natural interconnection with an ideal of society and identity (Demchenko, 2010), and conscience is the expression of self-consciousness of identity, ability to carry out moral control, to formulate moral duties for ourselves, to require their execution for ourselves and make assessment of our actions (Demchenko, 2010). Thus, the fairness of competition is the embodiment of moral and ethical ideals of good and fairness, the realization of the rule of law in economic (competitive) legal relationship.

Studying paradoxicality of existence of market economy moral aspects, D.V. Tuzov, points to the contradictory trends in the development of social morality under present crisis conditions. In particular, Western morality involves gaining public recognition solely through fair work, which, according to the author, turns society into Protestant morality that involves honesty, modesty, and commitment to work, efficiency, self-control and rationality. The link between morality and profitable business forms the moral principles of a market economy; these standards support the corporate spirit and fill the competition with additional content (Tuzov, 2010). In view of this, most entrepreneurs are confident in the necessity to comply with the ethical norms of entrepreneurial activity, the possibility of honest and fair competition, and the fairness of the market system. On the other hand, a civilized society provides for the active citizenship attitude, as well as the socially responsible attitude of entrepreneurs and the state

implementing the natural rights of citizens. At the same time, the will for self-fulfillment pushes entrepreneurs to find new domains and forms of economic activity that formally do not violate the conditions of competitive rivalry and only in some cases can be considered as a form of legitimate abuse of the right to competition.

Bibliographic references

- Aleshin, D.A., Artemyev, I.U. et al. (2012). *Competitive law of Russia*. Moscow: Izd. House of Higher School of Economics.
- Bakalinska, O.O. (2014). *Legal regulation of fair competition in Ukraine*. Kyiv: Research Institute of Private Law and Entrepreneurship to them. academician FG Burchak NPRrN of Ukraine.
- Demchenko, S.F. (2010). *Theoretical and methodological principles of efficiency of economic justice*. (Thesis D.Sc. in Law), SRI of Private Law and Entrepreneurship, Kyiv, Ukraine.
- Erhard, L. (1991) *Welfare for all*. Moscow: Nachala-Pres.
- Harris, D.J., O'Boyle, M., Warbrick, C. (1995). *The Law of the European Convention on Human Rights*. New York : Oxford University Press, 2009.
- Kharchenko, P.G. (2004). *Administrative and legal measures to ensure protection against unfair competition in the activities of the Antimonopoly Committee of Ukraine*. Odessa: ONU them. I. Mechnikova.
- Lagutin, V.D., Golovko, L.S. et al. (2005). *Antitrust activities*. Kyiv: KNTEU.
- Tuzov, D.V. (2010). *Paradoxically the existence of the moral aspects of a market economy in a modern post-industrial society*. (Thesis D.Sc. in Law), Tyumen govt. Acad. culture and arts, Tyumen, Russia.
- United Nations (UN). (1977). Convention of Paris for the Protection of Industrial Property, dated March 20, 1883. *United Nations*, 828, 138-140.
- Vinnik, O.M. (2004). *Commercial Law*. Kyiv: Atika.